IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

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WRIT PETITION NO : 13305 of 1998

Between:

Vadiamudi Suresh Kumar S/o. Veeraiah, R/o. Nagulapadu, Addanki Mandal, Prakasam District.

..... PETITIONER

AND

1 The District Collector, Prakasam District, Ongole.
2 The District Panchayat Officer, Ongole, Prakasam District.
3 The Divisional Panchayat Officer, Ongole, Prakasam District.
4 The Group Executive Officer-cum-Village Development Officer, Nagulapadu Gram Panchayat, Prakasam District.
5 The Sarpanch, Grampanchayat, Nagulapadu, Addanki Mandal, Prakasam District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of MANDAMUS, declaring the proceedings of the 1st respondent in ROC No.6706 of 1997 (PTS)A.3 dated 16-4-1998 is illegal, arbitrary, unconstitutional and against the principles of natural justice, unreasonable and consequently declare that the respondents have no power or jurisdiction to remove the poultry form of the petitioner.

Counsel for the Petitioner : MR.T.RAJENDRA PRASAD

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEVELOPMENT

The Court made the following :

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ORDER:

This writ petition is filed seeking a writ of Mandamus to declare the proceedings issued by the first respondent in Roc.No.6706/97(Pts)A3, dated 16-04-1993 ordering to remove the poultry farm of the petitioner within 15 days, as illegal and arbitrary and consequently to declare that the respondents have no power or jurisdiction to remove the poultry farm.

The petitioner claims to be running a small poultry farm with less than 100 birds in his house site at Nagulapadu. While so, the fourth respondent issued a notice on 14-5-1997 directing him to remove the poultry farm, for which he issued a reply requesting the fourth respondent to conduct an enquiry. Thereafter the fourth respondent issued another notice on 09-07-1997 informing that the Gram Panchayat adopted resolutions on 28-06-1997 and 25-09-1997 to remove the poultry farm. It is stated that the fourth respondent again issued a notice on 02-10-1997 directing the petitioner to remove the poultry farm. Questioning the notices of the fourth respondent dated 09-07-1997 and 02-10-1997 and the resolutions of the Gram Panchayat, the petitioner filed an appeal on 08-10-1997 before the first respondent-District Collector under Section 128 of A.P. Gram Panchayat Act. The petitioner states that when the respondents brought pressure on him to remove the poultry farm, he filed W.P. No.30337 of 1997, wherein this Court by order dated 19-11-1997 directed the respondents not to remove the poultry farm pending disposal of the appeal filed by the petitioner. In pursuance thereof, the first respondent appeared to have issued a notice in Rc.No.6707/97 (Pts)A3, dated 18-03-1998 directing the petitioner and others to appear before him on 27-3-1998 along with necessary

papers and documents.

The petitioner submits that accordingly he appeared through a counsel, and when the first respondent stated that he would order demolition of the poultry farm, his counsel submitted that no demolition could be ordered without giving 15 days prior notice in that respect. Thereafter, the first respondent issued the impugned proceedings holding that the petitioner had not filed any appeal before him, and that on the request made by the counsel for the petitioner, 15 days time was granted for removal of the poultry farm. The petitioner states that the appeal filed by him was referred in the notice issued to him by the first respondent on 18-03-1998, therefore it is stated, the first respondent passed the impugned order mechanically without applying his mind. Assailing the impugned proceedings as illegal and arbitrary, the petitioner filed this writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj & Rural Development.

Though the writ petition was admitted on 05-05-1998, no counter-affidavit has been filed. On 05-05-1998 this Court passed interim order in W.P.M.P. No.16041 of 1998 directing the respondents not to remove the poultry farm of the petitioner pending disposal of the writ petition.

Admittedly, pursuant to the directions of this Court in W.P. No.30337 of 1997, dated 19-11-1997, the first respondent issued a notice in Roc.No.6707/97(Pts)A3, dated 18-03-1998 directing the petitioner to appear before him on 27-03-1998 for hearing of the case. After hearing the case, the first respondent passed the impugned proceedings. It is to be noticed that in the notice, dated 18-03-1998, the appeal filed by the petitioner on 08-10-1997 was reflected as reference No.2. Therefore, the observation of the first respondent in the impugned proceedings dated
16-04-1998 that Sri Suresh Kumar (i.e. the petitioner) had not filed any appeal before the District Collector, Prakasam District, clearly makes it manifest that the first respondent even without looking into the appeal said to have been filed by the petitioner against the notices issued by the fourth respondent on 09-07-1997 and 02-10-1997 and the resolutions of the Gram Panchayat dated 28-6-1997 and 25-9-1997 directing for removal of the poultry farm of the petitioner, passed the impugned proceedings.

In the circumstances, the impugned proceedings issued by the first respondent-District Collector, Ongole, Prakasam District in Roc.No.6707/97(Pts)A3, dated 16-04-1998 is set aside and the first respondent is directed to hear the appeal filed by the petitioner on 08-10-1997, expeditiously after giving notices to the petitioner as well as the parties concerned, and pass appropriate orders thereon in accordance with law. Till such time, the interim order passed by this Court in W.P.M.P. No.16041 of 1998, dated 05-05-1998 shall continue.

The writ petition is accordingly allowed. No costs.

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N.V. RAMANA, J

Date: 24-02-2005

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the Twenty Fourth day of February, Two thousand and Five.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The District Collector, Prakasam District, Ongole.
2 The District Panchayat Officer, Ongole, Prakasam District.
3 The Divisional Panchayat Officer, Ongole, Prakasam District.
4 The Group Executive Officer-cum-Village Development Officer, Nagulapadu Gram Panchayat, Prakasam District.
5 The Sarpanch, Grampanchayat, Nagulapadu, Addanki Mandal, Prakasam District

6 Two C.Cs. to the G.P. for Panchayatraj & Rural Development, High Court Buildings, Hyderabad (OUT)

7 Two CD copies.

*Form-NIC-OGS/WP{**KRD**}*